

1 LON A. BURKE, ESQ.
2 Nevada Bar No. 6243
3 JAMES E. MURPHY, ESQ.
4 Nevada Bar No. 8586
5 LAXALT & NOMURA, LTD.
6 6720 Via Austi Parkway
7 Suite 430
8 Las Vegas, Nevada 89119
9 Telephone: (702) 388-1551
10 Facsimile: (702) 388-1559
11 lburke@laxalt-nomura.com
12 jmurphy@laxalt-nomura.com

13 *Attorneys for Plaintiff A.V.E.L.A. Inc.*

14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

16 A.V.E.L.A., Inc., a Nevada corporation,

Case No.: 2:10-cv-02013 PMP-RJJ

17 Plaintiff,

MOTION TO WITHDRAW

18 vs.

19 THE LYON COMPANY, a business entity
20 organized under the laws of Utah,
21 and DOES I through X, inclusive,

22 Defendants.

23 Attorney Lon A. Burke, Esq. of the law firm of LAXALT & NOMURA, LTD., moves
24 this Honorable Court for an order allowing it to withdraw as attorneys for Plaintiff
25 A.V.E.L.A. Inc.

26 This Motion is based upon the pleadings and papers on file with this Court, the
27
28

1 attached Memorandum of Points and Authorities, and the attached Affidavit in Support
2 of this Motion.

3 DATED this 23rd day of January, 2012.

4 LAXALT & NOMURA, LTD.

5 
6

7 LON A. BURKE, ESQ.
8 Nevada Bar No. 6243
9 6720 Via Austi Parkway
10 Suite 430
11 Las Vegas, Nevada 89119

12 *Attorneys for Plaintiff A.V.E.L.A. Inc.*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 This is an action brought by Plaintiff A.V.E.L.A. Inc. against Defendant The Lyon
15 Company. A.V.E.L.A. is seeking damages from Defendant The Lyon Company for
16 Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing,
17 and Unjust Enrichment.

18 Plaintiff A.V.E.L.A. filed its Complaint on November 17, 2010 with this Court.
19 Defendant The Lyon Company has not made an appearance in this action. A.V.E.L.A.
20 served and filed its Notice of Intent to Take Default on July 11, 2011, and filed its
21 Application for Entry of Default on August 1, 2011. The Clerk entered a Default on
22 August 2, 2011. There has been no scheduling order issued, and there is no trial
23 setting.

24
25 Laxalt & Nomura, Ltd. has represented Plaintiff A.V.E.L.A. in this lawsuit, and has
26 incurred unpaid legal expenses and costs. Laxalt & Nomura, Ltd. has exercised
27 reasonable efforts to seek payment of the unpaid expenses and costs, but has been
28

1 unsuccessful. Laxalt & Nomura, Ltd. further believes that any additional legal work
 2 performed or costs expended by moving attorneys will not be paid in full in a reasonable
 3 and timely manner.

4 Laxalt & Nomura, Ltd.'s continued representation of Plaintiff A.V.E.L.A. will result
 5 in an unreasonable financial burden due to A.V.E.L.A.'s failure to fulfill its obligation to
 6 timely pay for services rendered. Laxalt & Nomura, Ltd. has provided reasonable
 7 warning of withdrawal if A.V.E.L.A. failed to fulfill its financial obligations. NRPC
 8 1.17(b)(5) and (6).
 9

10 The applicable law regarding withdrawals is as follows:

11 **LOCAL RULE 10 – 6: Appearances, Substitutions and Withdrawals.**

12 *... (b) No attorney may withdraw after appearing in a case except by leave*
 13 *of court after notice served on the affected client and opposing counsel. ...*

14 *(d) Discharge, withdrawal or substitution of an attorney shall not alone be*
 15 *reason for delay of pretrial proceedings, discovery, the trial, or any hearing in the*
 16 *case.*

17 *(e) Except for good cause shown, no withdrawal or substitution shall be*
 18 *approved if delay of discovery, the trial or any hearing in the case would result.*
 19 *Where delay would result, the papers seeking leave of court for the withdrawal or*
 20 *substitution must request specific relief from the scheduled trial or hearing. If a*
 21 *trial setting has been made, an additional copy of the moving papers shall be*
 22 *provided to the clerk for immediate delivery to the assigned district judge,*
 23 *bankruptcy judge or magistrate judge.*

24 Furthermore, pursuant to Supreme Court Rule 46, an attorney may withdraw
 25 “[u]pon the order of the court or judge thereof on the application of the attorney or
 26 client.” SCR 46(2).
 27

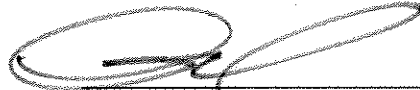
28 This Motion should be granted and allow Laxalt & Nomura, Ltd. to withdraw as
 counsel because the withdrawal can be accomplished without material adverse effect
 on the interests of the clients. NRPC 1.16(b)(1). Granting this Motion will not result in
 any delay of the trial or of the hearing of any other matter in this case. LR 10-6(e).

1 The Motion and supporting Memorandum of Points and Authorities and affidavit
2 have been served on A.V.E.L.A. and all parties.

3 WHEREFORE, it is respectfully requested that this Motion be granted, allowing
4 the law firm of Laxalt & Nomura, Ltd. to withdraw as attorneys of record for Plaintiff
5 A.V.E.L.A. Inc.

6 DATED this 23rd day of January, 2012.

8 LAXALT & NOMURA, LTD.

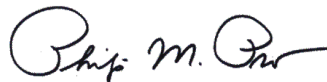
9
10 

11 LON A. BURKE, ESQ.
12 Nevada Bar No. 6243
13 JAMES E. MURPHY, ESQ.
14 Nevada Bar No. 8586
15 6720 Via Austi Parkway
16 Suite 430
17 Las Vegas, Nevada 89119

18 *Attorneys for Plaintiff A.V.E.L.A. Inc.*

17 IT IS SO ORDERED.

18 Plaintiff A.V.E.L.A. Inc. shall have until 2/23/2012 within which to designate in
19 writing new counsel of record.

20
21 

22 PHILIP M. PRO
23 UNITED STATES DISTRICT JUDGE

24 Dated: January 24, 2012.

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of LAXALT & NOMURA, LTD., and that I caused a true and correct copy of the foregoing document to be served by electronic transmission using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant: and/or to the following recipients deposited in the United States Mail, postage prepaid, first class delivery:

Leo Valencia, President
A.V.E.L.A., Inc.
132 N. El Camino Real, Ste. 363
Encinitas, CA 92024

James R. Farmer, Esq.
36 South State Street, Ste. 1900
Salt Lake City, UT 84111
Registered Agent for THE LYON COMPANY

DATED this 23 day of January, 2012.


An Employee of Laxalt & Nomura, Ltd.

AFFIDAVIT OF COUNSEL, LON A. BURKE, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

LON A. BURKE, ESQ., being first duly sworn, on oath, deposes and says:

1. I am an attorney with the law firm of LAXALT & NOMURA, LTD.
2. I am licensed to practice law in all Courts within the State of Nevada.
3. I have personal knowledge of the facts referred to in this Affidavit and could competently testify to these facts if called upon to do so in a court of law.
4. I make this Affidavit in support of Laxalt & Nomura's Motion to Withdraw as Counsel of Record for Plaintiff A.V.E.L.A.
5. Laxalt & Nomura represents A.V.E.L.A. Inc. in this lawsuit currently pending in the United States District Court of Nevada, Case No. 2:10-cv02013 PMP-RJJ.
6. There is currently no trial setting in this case.
7. Laxalt & Nomura, Ltd. has represented Plaintiff A.V.E.L.A. in this lawsuit, and has incurred unpaid legal expenses and costs.
8. Laxalt & Nomura, Ltd. has exercised reasonable efforts to seek payment of the unpaid expenses and costs, but has been unsuccessful.
9. Laxalt & Nomura, Ltd. further believes that any additional legal work performed or costs expended by moving attorneys will not be paid in full in a reasonable and timely manner.

10. Laxalt & Nomura, Ltd.'s continued representation of Plaintiff A.V.E.L.A. will result in an unreasonable financial burden due to A.V.E.L.A.'s failure to fulfill its obligation to timely pay for services rendered.
11. Laxalt & Nomura, Ltd. has provided reasonable warning of withdrawal to A.V.E.L.A. if it failed to fulfill its financial obligations.
12. A.V.E.L.A. may be served through Leo Valencia, President, A.V.E.L.A., Inc. 132 N. El Camino Real, Ste. 363, Encinitas, CA 92024.
13. A.V.E.L.A.'s telephone number is (877) 787-4855.
14. Proper notice of the Motion has been given to all parties.

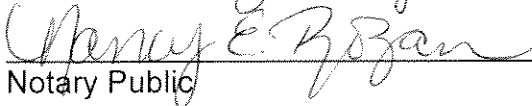
Further, your Affiant sayeth naught.



LON A. BURKE, ESQ.

SUBSCRIBED and SWORN to before me

this 23rd day of January, 2012.


Notary Public